

REMARKS

Applicant has not amended the claims in this response.

Claims 2-4 and 10-20 were cancelled in prior responses.

Claims 1 and 5-9 are currently pending in the application.

Claims Rejections – 35 USC § 102

Claims 1 and 6 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,945,928 to Ayres, (“Ayres”).

This rejection is respectfully traversed.

Of the claims rejected, claim 1 is independent, with the remaining claims dependent thereon.

Claim 1 recites among other things an assembly with the following features:

an elongate tubular housing having opposed first and second ends; and

a solid partition forming a closed bottom positioned within said housing between said first and second ends;

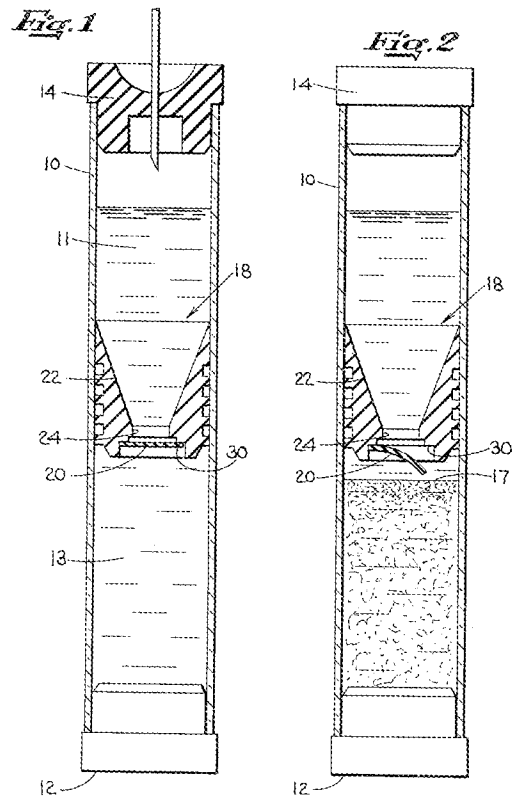
said housing defining a volume for specimen collection and containment therein between said first end and said partition;

said second end forming a false bottom comprising a bottom end below said partition, said bottom end comprising an annular skirt and a semi-spherical bottom.

Applicant submits that Ayres fails to disclose at least the claimed features of:

- (a) a solid partition,
- (b) a false bottom, and
- (c) a semi-spherical bottom.

The Examiner proposes that Ayres (See Figs.1 and 2 shown below) discloses a solid partition (18).



Applicant respectfully points out that Ayres discloses an evacuated tube having closed ends and a valve fixedly disposed between the ends to divide the tube into upper and lower chambers. The valve includes an elastomeric body having a centrally located circular opening 24 with a flap valve 20 closing the opening. The flap has a specific gravity greater than blood and when subjected to centrifugal forces will unseat to open the valve so that the chambers communicate (see Col. 2 lines 51 to 59, emphasis added).

Thus the valve 18 of Ayres is not a solid partition as claimed in the present invention.

In addition, Ayres discloses that when the tube 10 is to be filled with a blood sample, stopper 14 is punctured with a cannula so that blood is drawn into the evacuated upper chamber. As the upper chamber fills with blood, a pressure differential is created across flap 20 causing it to be flexed downwardly and be unseated from surface 30. The unseating of flap 20 allows blood to flow into the lower chamber so that the entire tube is filled with the blood sample (see Col. 3 lines 27 to 34, emphasis added).

Therefore Ayres fails to disclose a false bottom.

Furthermore Ayres discloses that the lower end of glass tube (10) is a hollow cylinder, and as such does not have semi spherical bottom.

For these reasons applicant submits that independent claim 1 and dependent claim 6, are not anticipated by the Ayres reference.

Nor would Ayres render claim 1 obvious.

There is no suggestion in Ayres whatsoever to have a solid partition, within the glass tube (10). In contrast Ayres teaches that it is essential for the valve (18) to provide a passageway (24) between the upper and lower chambers so that the sample can flow between the upper and lower chambers (see Col. 3 lines 19 to 34). Thus a solid partition would destroy the function of Ayres.

Furthermore there is no suggestion in Ayres to have a false bottom. Conversely the use of a false bottom in Ayres would render the tube inoperable.

In addition there is no suggestion in Ayres to have a semi-spherical bottom at the base of the glass tube (10). In fact Ayres teaches away from a semi-spherical bottom by requiring a hollow cylindrical tube to be provided in order to allow sufficient securement and sealing of the stopper (12) within the tube.

Accordingly, it is submitted that the container assembly as defined by claim 1 is not taught or suggested by Ayres. In addition, claims 5-9 being dependent on claim 1 are likewise patentable over the cited reference.

Claims Rejections – 35 USC § 103

Claims 5 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ayres in view of U.S. Patent No. 5,458,854 to Burns (“Burns”).

These rejections are respectfully traversed.

Ayres fails to disclose, teach or suggest the invention of claim 1 for the reasons as discussed above.

Burns is cited for use of a partition having an arcuate shape, a thermoplastic material and outside tube diameter dimensions.

Applicant submits Burns fails to disclose, teach, or suggest the claimed assembly of claim 1 as discussed previously and does not remedy the shortcomings of Ayres. In addition, claims 5 and 7-9 being dependent on claim 1 are likewise patentable over the cited reference.

Conclusion

In view of the remarks herein, applicant submits the claims are patentably distinct over the prior art and allowable in form.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 02-1666.

If the Examiner has any questions or comments relating to the present application, he or she is respectfully invited to contact Applicant's agent at the telephone number set forth below.

Respectfully submitted,

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